



Improving SMEs' Access to Cross-Border Public Procurement

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Public procurement in Germany

Overview

Every year public contracts worth 360 billion Euros are awarded in the Federal Republic of Germany.

The number of public buyers in Germany is appr. 30.000.

As Germany is a federal state there are different levels of competences. Each administrative level procures according to its respective tasks.

- ◆ On the federal level (central government bodies) e.g. there are the ministries, the defense sector, motorways, management of real estate and the employment agency
- ◆ On the "Länder" level there are ministries, the education sector (schools, universities) and the police...
- ◆ On the municipality level: hospitals, schools, utilities

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European regulation— useful links

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC :

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0024>

The European legislative Framework

As in all EU member states the public procurement laws that are applicable depend on whether the estimated contract value is above or below the EU-procurement thresholds. These thresholds are adapted every two years: here are the ones that are valid for 2016 / 2017 for public authorities that procure according to the Classical Directive 2014/24 EU :

- ◆ 135.000 Euro: Procurement of services and supplies contracts awarded by Central Government authorities (Bundesbehörden).
- ◆ 209.000 Euro: Procurement of other service contracts, all design contests, subsidised service contracts, all supplies contracts (Sub-central contracting authorities – Nicht-Bundesbehörden)
- ◆ 5.225.000 Euro: Works contracts
- ◆ 750.000 Euro: All services concerning social and other specific services according to Annex XIV.

This European directive is implemented into national German law.

German regulation—Useful links

Link to public procurement laws:

<http://www.bmwi.de/Redaktion/DE/Artikel/Wirtschaft/vergabe-uebersicht-und-rechtsgrundlagen.html>

National Regulation

There are different legal frames for contracts above and below the EU-thresholds (Schwellenwerte).

Regulations above the EU threshold :

- ◆ **GWB** : act against Restraints on Competition (*Gesetz gegen Wettbewerbsbeschränkungen*)
- ◆ **VgV** : regulation on the award of public contracts (*Vergabeverordnung*)
- ◆ **VOB/A**: contracting rules for the award of public work contracts (*Vergabe- und Vertragsordnung für Bauleistungen*)
- ◆ **SektVO**: regulation for contracts in the utilities sector (*Sektorenverordnung*)
- ◆ **VSVgV**: contracting rules for tenders in the defense and security sector (*Vergabeverordnung Verteidigung und Sicherheit*)
- ◆ **KonzVgV**: contracting rules for concessions (*Konzessionsvergabeverordnung*)

Regulations below the EU threshold :

For contracts below the EU-thresholds only national i.e. budgetary law applies. There are different regulations depending on the *Land* where the public authority is situated.

- ◆ **VOL/A** : regulation for the award of supply and service contracts below the EU thresholds (*Vergabe- und Vertragsordnung für Leistungen*)
- ◆ **UVgO** : regulation for the award of supply and service contracts below the EU thresholds (*Unterschwellenvergabeordnung*). *This is a new regulation since 2017 which is not yet implemented in all Länder.*
- ◆ **VOB/A** the contracting rules for the award of public work contracts (*Vergabe- und Vertragsordnung für Bauleistungen*)

As general terms and conditions for the fulfillment of the contracts there are two set of rules VOL/B for delivery and service contracts and VOB/B for construction/public works contracts.

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Good to know

The public procurement legislation provides a number of different procedures for awarding contracts. There are different names for the procedures depending on whether the contracts are above or below the EU-thresholds. Which procedures can be chosen by the public authorities is regulated in the procurement legislation.

Below EU threshold	Above EU threshold	Explanation
Öffentliche Ausschreibung	Offenes Verfahren	Open procedure: publication of tender notice unlimited number of bidders unrestricted competition Download of tender documents or request for tender documents to be sent by public buyer.
Beschränkte Ausschreibung <i>Usually there is a request for participation. In justified cases (lower contract values) companies are asked directly to hand in a bid without further publication</i>	Nicht offenes Verfahren	Non open procedure: restricted participation (choice of bidders after a published request for participation) same tender assessing procedure as for open procedure
	Wettbewerblicher Dialog	Competitive Dialogue: only for complex contracts dialogue to define the future object, basis of the tenders
Freihändige Vergabe Verhandlungsvergabe <i>Usually companies are contacted directly without further publication. Usually for lower contract values or supplies or services with a creative input required from the bidders.</i>	Verhandlungsverfahren	Negotiated procedure: Choice of this procedure rather restricted. negotiation possible also after tender submission

Database

Thresholds for national tenders

Whether a public tender has to be published and awarded within an open procedure depends on the contract value. All Länder have their own thresholds which regulate whether and where a tender notice has to be published. In many cases a publication is compulsory for tenders above a contract value of 50.000 Euros for supply and service contracts and 100.000 Euros for public works contracts.

Databases for tenders below the EU threshold :

There is no compulsory database where all public tenders in Germany have to be published. The most comprehensive databases which are free of charge:

<http://www.bund.de/Content/DE/Ausschreibungen/Suche/Formular.html?view=processForm&nn=4641514>

<https://www.evergabe-online.de/search.html?1>

A list of more tender databases can be obtained from Auftragsberatungszentrum Bayern e.V

Compulsory Databases for tenders above the EU threshold :

<http://www.ted.europa.eu>



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SME friendly procurement - Division into lots

In order to give SMEs an adequate chance to participate in public tenders, the public buyers are obliged to divide large contracts into lots. This division can be done on a quantitative or a qualitative basis.

If a bidder thinks that he is prevented from bidding because the contract hasn't been divided into lots, the bidder should contact the public authority and ask for an adequate division.

Social Networks

Twitter:

https://twitter.com/sesam_eu

YouTube:

<https://www.youtube.com/user/pargovpl>

Website:

<http://www.sesamproject.eu/>

SESAM

Initiated in 2017, the project SESAM intends to improve SME's access to Cross-Border Public procurement. This project will provide knowledge and support for a successful participation in public procurement within European Union, in particular in Germany, Italy, France and Poland.

The following tools will be available for entrepreneurs:

- ◆ Seminars
- ◆ Webinars
- ◆ Training sessions
- ◆ Factsheets and guidelines
- ◆ B2B (business to business) and B2P (business to procurer) events
- ◆ Lists of potential partners/public buyers
- ◆ Advisory service

Contact

Angelika Höß

Mail : hoess@abz-bayern.de